
DEPARTMENT OF STATE REVENUE
Revenue Ruling # 2008-19 ST
January 12, 2009

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ISSUE

Sales/Use Tax – Nexus

A company is seeking an opinion on whether it has nexus for Indiana sales and use tax purposes.

Authority: [IC 6-2.5-3-1](#); Quill Corp. v. North Dakota, 504 U.S. 298 (1992); Arizona Dep't of Revenue v. Care Computer Systems, Inc., 4 P.3d 469 (Ariz. Ct. App. 2000); Florida Dep't of Revenue v. Share Int'l, Inc., 676 So.2d 1362 (Fla. 1996); Town Crier, Inc. v. Department of Revenue, 733 N.E.2d 780 (Ill. App. Ct. 2000); In re Appeal of Intercard, Inc., 14 P.3d 1111 (Kan. 2000); Orvis Co. v. Tax Tribunal, 654 N.E.2d 954 (N.Y. 1995).

STATEMENT OF FACTS

The company is engaged in the sale of health and personal care products. Customers can order the company's products via mail-order, internet, telephone, or facsimile. The company delivers all products via mail or common carrier.

Certain customers resell the company's products. These resellers may consume or resell the company's products within the reseller's discretion. The company does not impose quotas on the resellers or require the resellers to engage in cold calling.

The resellers of the products own the products upon the purchase from the company. The company generally does not impose geographical or other activities of the resellers; however, the resellers are required to designate the reseller's business as independent from the company.

The company employs regional managers, all based outside Indiana. The regional managers are collectively responsible for holding one-day seminars and meeting occasionally with top resellers across the United States. Two one-day seminars were conducted in Indiana in 2007. In addition, the company's employees made eight one-day visits to Indiana in 2007.

The company also conducts two conventions a year; however, no convention has been held in Indiana in at least ten years.

If a customer purchases the company's product directly from the company, the customer must return the product directly to the company if the customer is dissatisfied with the product.

DISCUSSION

[IC 6-2.5-3-1\(c\)](#) states:

"A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property or services for use, storage, or consumption in Indiana and who:

- (1) maintains an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by the retail merchant or through a representative, agent, or subsidiary;
- (2) maintains a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, installs, repairs, assembles, sets up, accepts returns of, bills, invoices, or takes orders for sales of tangible personal property or services to be used, stored, or consumed in Indiana;
- (3) is otherwise required to register as a retail merchant under [IC 6-2.5-8-1](#); or
- (4) may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.

The company has no physical locations in Indiana; therefore the company does not qualify under paragraph (1). The company does not maintain any employees, agent, or other representatives acting under the company's authority; therefore, the company does not qualify under paragraph (2). The company otherwise is not required to register as a retail merchant under [IC 6-2.5-8-1](#), and thus paragraph (3) does not apply.

With regards to the Constitutional argument, the United States Supreme Court ruled in Quill Corp. v. North Dakota, 504 U.S. 298 (1992), "substantial nexus" with a state, including some type of physical presence in that state, is required for a taxpayer to be subject to the state's sales or use tax collection requirements. While neither the United States Supreme Court nor Indiana courts has not established a definitive minimum level of presence that would subject or exempt a tax, other state courts have issued rulings on the level of presence that would constitute "substantial nexus" with Indiana.

In In re Appeal of Intercard, Inc., 14 P.3d 1111 (Kan. 2000), the court found that eleven visits over a forty-eight month period by a manufacturer's technicians to stores in Kansas did not constitute "substantial nexus"

sufficient to impose sales tax collection requirements on the manufacturer.

In *Florida Dep't of Revenue v. Share Int'l, Inc.*, 676 So.2d 1362 (Fla. 1996), the court found that an out-of-state mail order vendor which conducted seminars in Florida three days a year did not have "substantial nexus" with Florida sufficient to permit Florida to require the mail order business to collect use tax on behalf of Florida.

However, in *Arizona Dep't of Revenue v. Care Computer Systems, Inc.*, 4 P.3d 469 (Ariz. Ct. App. 2000), the court found that a computer hardware and software company that had a salesperson enter the state one to two days each year for seven years, coupled with eighty days of training over a forty-five month period, constituted "substantial nexus" sufficient to impose a sales or use tax collection requirement.

In addition, in *Town Crier, Inc. v. Department of Revenue*, 733 N.E.2d 780 (Ill. App. Ct. 2000), the court found that a furniture and window-treatment vendor had substantial nexus with Illinois when the vendor had made thirty deliveries into Illinois over a period of time and had installed window dressings in Illinois on five occasions.

In *Orvis Co. v. Tax Tribunal*, 654 N.E.2d 954 (N.Y. 1995), the court found that a vendor that entered New York twelve times over a three-year period to communicate with the reseller of the vendor's products and to solicit sales of the vendor's products. The court found that the vendor's contacts with New York constituted "substantial nexus" for sales and use tax collection purposes.

Based on the frequency and nature of the company's contacts with Indiana, the company is factually closer to the taxpayers in the cases in which other states have found that the taxpayer lacked "substantial nexus" with that particular state. The Department finds that the company lacks "substantial nexus" sufficient to permit Indiana to impose a sales and use tax collection responsibility on the company.

RULING

The company lacks "substantial nexus" sufficient to permit Indiana to impose a sales and use tax collection responsibility on the company.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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